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MHSA PERMANENT LOAN DISBURSEMENT AGREEMENT

between

**[BORROWER],
A CALIFORNIA _____**

and

CALIFORNIA HOUSING FINANCE AGENCY

Executed as of _____, 200__

CalHFA Development No. [loan no.]

DISCLAIMER:

EACH DOCUMENT IS INTENDED FOR INFORMATIONAL PURPOSES ONLY. IF YOUR LOAN APPLICATION IS ACCEPTED BY CALHFA, THE LOAN DOCUMENTS SPECIFIC TO YOUR TRANSACTION WILL BE TAILORED TO MEET THE SPECIFIC REQUIREMENTS OF YOUR TRANSACTION AND MAY VARY SUBSTANTIALLY FROM THE DOCUMENTS POSTED HERE. THE TEMPLATE LOAN DOCUMENTS ARE SUBJECT TO CHANGE WITHOUT NOTICE. CALHFA DOES NOT WARRANT OR REPRESENT THAT THE COVENANTS AND CONDITIONS IN THE TEMPLATE DOCUMENTS WILL APPLY TO YOUR SPECIFIC TRANSACTION.

MHSA PERMANENT LOAN DISBURSEMENT AGREEMENT

THIS MHSA Permanent Loan Disbursement Agreement (“**Disbursement Agreement**”) is executed as of _____, 200__, by and between _____, a California _____ (“**Borrower**”), and California Housing Finance Agency, a public instrumentality and political subdivision of the State of California (“**Agency**”).

RECITALS

A. All capitalized terms, if not otherwise defined in the Recitals or in Article 1 are defined in the MHSA Regulatory Agreement, CalHFA Development No. _____, recorded on the real property described below.

B. Borrower owns the fee [OR] leasehold interest in that certain real property described in **Exhibit A** (the “**Development**”), which includes all improvements made or to be made thereon.

C. Borrower proposes to construct certain improvements or renovations (“**Construction**”) consisting of a ____-unit affordable multifamily housing development together with all appurtenances, fixtures, and tenant improvements now or hereafter located on the Development (“**Improvements**”). The Improvements shall be constructed or renovated in accordance with plans and specifications referenced in **Exhibit C** (“Description of Plans and Specifications”) which Borrower has delivered, or will deliver to the Agency, as amended, in order to comply with the terms and conditions of this Disbursement Agreement (“**Plans and Specifications**”). Borrower has requested from the Agency an MHSA Permanent Loan (defined in Section 2.1) for the purpose of such Construction.

D. The Borrower, in conjunction with the County of _____ and the California Department of Mental Health (“**DMH**”), has agreed to make the Development available to MHSA Eligible Residents.

E. Based upon the representations of the Borrower and the Agency’s review of Plans and Specifications, the Agency has agreed to provide financing for Improvements to the Development by way of an MHSA Permanent Loan and pursuant to the terms as stated in the MHSA Permanent Loan Documents.

F. The MHSA Permanent Loan will be a long term permanent loan, but shall be disbursed in increments (“**Disbursements**”) during the course of Construction.

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G. Subject to the terms and conditions of this Disbursement Agreement, the Agency has agreed to fund the various Disbursements which, when combined in total, constitute the MHSA Permanent Loan.

NOW, THEREFORE, Borrower and the Agency agree as follows:

ARTICLE 1. DEFINITIONS

1.1 DEFINED TERMS.

“Authorized Signatory” – means _____, who is designated by the Borrower to submit CalHFA Pay Requests (defined below).

“Border Zone Property” – means any property designated as “border zone property” under the provisions of California Health and Safety Code, Sections 25220 et seq., or any regulation adopted in accordance therewith.

“Borrower's Funds” – means all funds of Borrower pursuant to the terms and conditions of this Disbursement Agreement.

“Business Day” – means a day of the week (but not a Saturday, Sunday or State-recognized holiday) on which the offices of the Agency are open to the public for carrying on substantially all of the Agency's business functions. Unless specifically referenced in this Disbursement Agreement as a Business Day, all references to “days” shall be to calendar days.

“CalHFA Pay Request” – means that form approved by the Agency used to request Disbursement of the MHSA Permanent Loan.

“Commitment” – means the Agency’s Final Commitment Letter for an MHSA Housing Program Permanent Loan dated _____, 200__, CalHFA Development No. _____ which may be amended from time to time.

“Completion Date” – means the date scheduled for completion of the Development Improvements and which is _____ .

“Construction” – means either construction of a new Development or renovation or rehabilitation of an existing Development.

“Construction Contract” – means that certain agreement to construct the Improvements dated _____, 200__, between Borrower and General Contractor (defined below).

“Construction Lender” – means _____, who will be providing additional funding for the Construction of the Development.

“Construction Loan” – means that loan in the amount of \$ _____ provided by the Construction Lender.

“Construction Manager” – means _____.

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“**Construction Schedule**” – means the initial construction schedule attached as **Exhibit B**.

“**Default**” – shall have the meaning given to such term in Section 9.1.

“**General Contractor**” or “**GC**” – means _____, which Borrower represents is licensed by the State of California as a General Contractor and who will be generally responsible for the construction of the Improvements.

“**Hazardous Materials**” – shall have the meaning given to such term in Section 7.1(a).

“**Hazardous Materials Laws**” – shall have the meaning given to such term in Section 7.1(b).

“**MHSA**” – means the Mental Health Services Act and as further defined in Recital A of the MHSA Regulatory Agreement.

“**MHSA Funds**” – means funds allocated to the counties by the DMH and transferred to the Agency for the purposes of making MHSA loans.

“**MHSA Permanent Loan**” – means a long term loan by the Agency for the purpose of making Improvements to, and providing the permanent financing of the Development using monies from the Fund.

“**Plans and Specifications**” – shall have the meaning given to such term in Recital C which shall have been approved by the permitting authority, and which may include an Agency-approved physical needs assessment.

“**Tax Credit Investor**” – means _____.

“**Work**” – means the progress of construction of the Improvements.

1.2 EXHIBITS INCORPORATED. Exhibits A, B, C and D all attached hereto, are hereby incorporated into this Disbursement Agreement.

ARTICLE 2. LOAN

2.1 MHSA PERMANENT LOAN. Subject to the terms of this Disbursement Agreement, the Agency agrees to lend to Borrower and Borrower agrees to borrow from the Agency the principal sum of _____ and No/100s Dollars (\$ _____), said sum to be evidenced by the Note of even date herewith (the “**MHSA Promissory Note**”). The MHSA Promissory Note shall be secured, in part, by the MHSA Deed of Trust, of even date herewith, encumbering that Development as described in **Exhibit A**, including all Improvements now or hereafter located on the Development. Amounts disbursed to or on behalf of Borrower pursuant to the MHSA Promissory Note shall be used to finance construction of the Development and Improvements and for such other purposes and uses as may be permitted under this Disbursement Agreement and the other MHSA Permanent Loan Documents.

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2.2 CONFLICTS. The Borrower agrees and acknowledges that in the event the Agency provides financing to the Development from non-MHSA funds for a construction loan, the terms of the Agency's Construction Loan Agreement shall supplement the requirements stated herein.

2.3 INTEREST. The MHSA Permanent Loan shall accrue simple interest at the rate stated in the MHSA Promissory Note.

2.4 EFFECTIVE DATE. The date of the MHSA Permanent Loan Documents is for reference purposes only. The "*effective date*" of delivery and transfer to the Agency of the security under the MHSA Permanent Loan Documents and of Borrower's and the Agency's obligations under the MHSA Permanent Loan Documents shall be the date the MHSA Deed of Trust is recorded in the Office of the County Recorder of the county where the Development is located.

2.5 INSPECTION FEES. Borrower has or shall pay to the Agency a construction inspection fee as follows:

<i>Amount</i>	<i>Paid</i>	<i>Due</i>

2.6 REPAYMENT. Borrower shall repay the MHSA Permanent Loan, with the stated interest, in accordance with the provisions of the MHSA Promissory Note, the MHSA Regulatory Agreement, and this Disbursement Agreement. Except as otherwise provided, all payments shall be applied first to interest and then to principal.

2.7 PREPAYMENT. Borrower may pay the principal and any interest under the MHSA Promissory Note prior to or in advance of the time for payment as provided in the MHSA Promissory Note, without penalty; provided the MHSA Regulatory Agreement remains in effect for the term as specified therein.

ARTICLE 3. CONSTRUCTION

3.1 COMMENCEMENT AND COMPLETION. Borrower shall commence construction of the Improvements without delay after recordation of the MHSA Deed of Trust and shall complete construction of the Improvements substantially in accordance with the Plans and Specifications on or before the Completion Date.

Force Majeure. Subject to the submission to the Agency of an appropriate change order, the time within which construction of the Improvements must be completed shall be extended for a period of time equal to the period of any delay directly affecting construction which is caused by fire, earthquake or other acts of God, strike, lockout, acts of public enemy, riot, insurrection, or governmental regulation of the sale or transportation of materials, supplies or labor; provided, however, that Borrower shall furnish the Agency with written notice satisfactory to the Agency evidencing any such delay within fifteen (15) days from the occurrence of any such delay. In no event shall the time for completion of the Improvements be extended to more than sixty (60) days beyond the Completion Date.

3.2 CONSTRUCTION CONTRACT. Borrower (or Borrower's assignor) and Contractor have entered into the Construction Contract pursuant to the terms and conditions of which Contractor is to construct the Improvements. Borrower shall require Contractor to perform in accordance with the terms of the Construction Contract and shall not amend, modify or alter the responsibilities of Contractor under the Construction Contract without the Agency's prior written consent.

3.3 PLANS AND SPECIFICATIONS.

Change Orders. Borrower must obtain the Agency's prior written approval of change orders or a series of change orders resulting in a cost increase of \$25,000 or more or decrease of \$10,000 or more, or any changes which the Agency deems as material. In order to obtain the Agency's approval, Borrower shall submit an AIA G701 along with whatever documents and information the Agency requests to evaluate the proposed changes. The Agency may take a reasonable amount of time to evaluate the proposed changes and Borrower agrees any such delay will not affect Borrower's obligation to complete Construction by the Completion Date. If the Agency does not approve, deny, or otherwise respond to requests for change orders within ten (10) Business Days following receipt of such request, then the change order shall be deemed approved.

3.4 PROHIBITED CONTRACTS. Without the Agency's prior written consent, Borrower shall not contract for any materials, furnishings, equipment, fixtures or other parts or components of the Improvements, if any third party shall retain any ownership interest (other than lien rights created by operation of law) in such items after their delivery to the Development. Borrower shall have five (5) days to effect the removal of any such retained interest. Notwithstanding the foregoing, Borrower shall have the right to lease any laundry and office equipment. Borrower shall deliver copies of such leases to the Agency, which leases shall be subordinate to the MHSA Permanent Loan Documents.

3.5 CONSTRUCTION RESPONSIBILITIES. Borrower shall construct the Improvements in a workmanlike manner according to the Plans and Specifications and the recommendations of any soils or engineering report approved by the Agency. All materials intended for incorporation into the Improvements shall be stored with a bonded warehouse or, if stored at the site, adequately secured against loss or damage. Borrower shall comply with all applicable laws, ordinances, rules, regulations, building restrictions, recorded covenants and restrictions, and requirements of all regulatory authorities having jurisdiction over the Development or Improvements. Borrower shall be solely responsible for all aspects of Borrower's business and conduct in connection with the Development and Improvements, including, without limitation, for the quality and suitability of the Plans and Specifications and their compliance with all governmental requirements, the supervision of the work of construction, the qualifications, financial condition and performance of all architects, engineers, contractors, material suppliers, consultants and property managers, and the accuracy of all applications for payment and the proper application of all Disbursements. The Agency is not obligated to supervise, inspect or inform Borrower or any third party of any aspect of the Construction or any other matter referred to above.

3.6 INSPECTIONS. The Agency or its inspector shall have the right to enter upon the Development at all reasonable times to inspect the Improvements and the Work to verify information disclosed or required pursuant to this Disbursement Agreement. Borrower agrees to cooperate fully (and to cause the General Contractor to cooperate fully) with the Agency or its inspector and to

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permit all appropriate access to the Development and to all relevant documents related thereto. Any inspection or review of the Work by the Agency is solely to determine whether Borrower is properly discharging its obligations to the Agency and may not be relied upon by Borrower or by any third party as a representation or warranty of compliance with this Disbursement Agreement or any other agreement. The Agency owes no duty of care to Borrower or any third party to protect against, or to inform Borrower or any third party of, any negligent, faulty, inadequate or defective design of the Work or Improvements as determined by the Agency. The Agency shall have no liability to Borrower or any third party on account of any inspection or review of the Improvements by the Agency. In addition, the Agency will have the right, at any time, to examine the books, records, plans, shop drawings, specifications, and other documents of Borrower pertaining to the Construction and Work and to make copies thereof.

3.7 SURVEYS (if applicable). Borrower shall promptly deliver to the Agency: (a) upon the Agency's written request, a perimeter survey of the Development; (b) upon completion of the foundations of the Improvements, a survey showing the location of the Improvements on the Development and confirming that the Improvements are located entirely within the Development and do not encroach upon any easement, or breach or violate any governmental requirement or, with the Agency's consent, a foundation endorsement insuring the absence of such encroachments and violations and otherwise reasonably acceptable to the Agency; and (c) upon completion of the Improvements, an as-built survey acceptable to a title insurer for purposes of issuing an ALTA policy of title insurance. All such surveys shall be performed and certified by a licensed engineer or surveyor acceptable to the title insurer.

ARTICLE 4. LOAN DISBURSEMENT

4.1 CONDITIONS PRECEDENT. **Borrower shall submit, and the Agency shall process, only one request for disbursement per month.** The Agency's obligation to make Disbursements or take any other action under the MHSA Permanent Loan Documents shall be subject to the Borrower's timely submittal of an executed CalHFA Pay Request which shall include an AIA G702/G703 and satisfaction of each of the following conditions precedent:

(a) Initial Disbursement. The following are conditions to the initial disbursement under this Disbursement Agreement.

(i) Construction Contract. A final executed Construction Contract, duly recorded.

(ii) Payment and Performance Bonds. If the MHSA Permanent Loan is the sole source of Construction financing, Borrower shall deliver to the Agency a Performance Bond with Dual Obligatee Rider and a Payment Bond for labor and materials in form, substance and amount acceptable to the Agency ("**Bonds**"). If requested by the Agency, Borrower shall have recorded the Bond and filed the Plans and Specifications and the Construction Contract in the county where the Development is located.

(iii) Certification of Basis of Costs. Borrower shall have submitted a certification by the Contractor that the costs set forth in the budget attached as **Exhibit D** are based on the final Plans and Specifications.

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(iv) Utilities. All utility services, including, without limitation, gas, water, sewage, electrical and telephone, necessary for the Construction and occupancy of the Development are available at or within the boundaries of the Development, or Borrower has taken all steps necessary to assure that all such services will be available upon completion of the Improvements.

(v) Permits. All required permits for Construction have been acquired and approved.

(vi) Insurance. Borrower has in force and effect all insurance as required in Article 5.

(vii) General Contractor Representation. A statement verified under penalty of perjury by the General Contractor that it is not affiliated with the Borrower.

(viii) Other. Any such requirements which the Agency deems as necessary.

(b) Conditions to All Disbursements. For all Disbursements made after the first Disbursement, Borrower shall be subject to a reimbursement wiring fee charge. In addition, the following are conditions to all Disbursements (including the initial Disbursement) under this Disbursement Agreement.

(i) No Default. There shall exist no Default, as defined in this Disbursement Agreement, or Default as defined in any of the other MHSA Permanent Loan Documents, or event, omission or failure of condition which would constitute a Default after notice or lapse of time, or both.

(ii) Loan In Balance. Any undisbursed MHSA Permanent Loan funds together with all sums, if any, to be provided by Borrower or other lenders as shown in **Exhibit D** shall be at all times equal to or greater than the amount which the Agency from time to time determines necessary to: (A) pay, through completion, all costs of development, construction, marketing and sale or leasing of the Development in accordance with the MHSA Permanent Loan Documents; (B) pay all sums which may accrue under the MHSA Permanent Loan Documents prior to repayment of the Loan; and (C) enable Borrower to perform and satisfy all of the covenants of Borrower contained in the MHSA Permanent Loan Documents. If the Agency determines at any time that the undisbursed MHSA Permanent Loan funds are insufficient for said purposes, Borrower shall deposit the amount of such deficiency identified by the Agency in an Agency-approved account or escrow account within seven (7) days of the Agency's written demand.

(iii) Disbursement of Other Funding Sources. All of the proceeds of other sources of financing described in Borrower's application for the MHSA Permanent Loan to the Agency (including _____) shall have been fully disbursed (or shall be available for disbursement in a manner acceptable to the Agency) to pay Development costs in accordance with the budget attached hereto as **Exhibit D**, and Borrower shall have delivered to the Agency written evidence thereof reasonably satisfactory to the Agency. [*with the exception of the _____ loan in the amount of \$_____, which is to fund no later than _____.*]

(iv) Certification of Use of Funds. Borrower shall provide the Agency with such certifications as the Agency shall reasonably require to confirm the application or proposed application of MHSA Permanent Loan funds for qualified purposes as required by the Agency.

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(v) Budget and Disbursement Procedures. Borrower shall have submitted all Agency requested documents and information related to the Construction Budget and Disbursement Plan (**Exhibit D**) with respect to the proposed Disbursement.

(vi) Title Policy and Endorsement. The Agency shall have received a title policy acceptable to the Agency and CLTA 122 and 101.2, and 102.5 endorsements (if applicable) and such other endorsements to its title policy as it shall reasonably request in connection with each proposed Disbursement, insuring that there are no intervening liens.

(vii) Other. Borrower shall provide any other information/requirements which the Agency deems as necessary.

(c) CalHFA Pay Requests. All requested Disbursements shall be in accordance with the disbursement plan as indicated on **Exhibit D**, and as further clarified in the section below.

(i) Each request for Disbursement shall be submitted at least ten (10) Business Days before the Disbursement is desired and shall show the percentage of materials provided or contract completed as of the date of the request for each line item included in the cost breakdown. The executed CalHFA Pay Request must be accompanied by AIA Forms G702 and G703 (when applicable), invoices and any supporting documentation that the Agency may deem necessary, in the Agency's sole discretion, to protect the Agency's interest in the Development, and substantiate the performance of the Work, which may include, without limitation, the following:

(1) A Waiver and Release upon Progress Payment, conditional or unconditional as applicable; and

(2) A Waiver and Release upon Final Payment, conditional or unconditional as applicable.

These waivers shall be made by the General Contractor, subcontractor or materialman (as applicable) and shall be in the form specified by California Civil Code Section 3262.

(d) Application of Disbursements. All Disbursements made to the Borrower shall be held in trust and applied by the Borrower solely for the purposes for which the funds have been disbursed. The Agency has no obligation to Borrower, any limited partner or investor, guarantor, other lender, or any other third party to monitor or determine Borrower's use or application of Disbursements.

(e) Retention. All Disbursements shall be subject to retention as described in **Exhibit D**.

4.2 OVERHEAD, PROFIT AND GENERAL CONDITIONS. Requests for Disbursements for Contractor Overhead and/or Contractor Profit line items cannot exceed, in cumulative, an amount equal to the construction overall percentage of completion, as determined by the Agency.

ARTICLE 5. INSURANCE

5.1 INSURANCE REQUIREMENTS.

(a) Construction Risk. Until actual completion of the Work, and issuance of a Certificate of Occupancy or Notice of Completion, Borrower shall maintain at Borrower's sole expense, with licensed insurers approved by the Agency, policies of insurance in accordance with insurance requirements as indicated on the Agency's website (www.calhfa.ca.gov/multifamily/mhsa/index.htm) under "***California Housing Finance Agency Construction Risk***", and such other coverage as may be required by the Agency. If the Work involves rehabilitation, additional insurance requirements may apply.

(b) Insurance Requirements Following Completion of Construction. At the time of issuance of the Certificate of Occupancy or Notice of Completion and prior to the retention draw, Borrower shall comply with the Agency's insurance requirements as specified on the Agency's website link referenced above as "***Insurance Requirements (Permanent)***."

(c) Title Insurance. Borrower shall cause to be provided to the Agency a title insurance policy, together with any endorsements which the Agency may reasonably require, insuring the Agency, in the principal amount of the MHSA Permanent Loan, of the validity and the priority of the lien of the MHSA Deed of Trust upon the Development, subject only to matters approved by the Agency in writing. During the term of the MHSA Permanent Loan, Borrower shall deliver to the Agency, within five (5) Business Days of the Agency's written request, such other endorsements to the title policy as the Agency may require.

5.2 GENERAL. Borrower shall provide the Agency all certificates of insurance prior to or upon the closing of the MHSA Permanent Loan. Upon request, Borrower shall provide to the Agency the originals of all required binders or insurance policies, or other evidence of insurance acceptable to the Agency. All insurance policies shall provide that the insurance shall not be cancelable or materially changed without thirty (30) days prior written notice to the Agency. The Agency shall be named as an additional insured on all policies of insurance. All hazard insurance shall name the Agency as a Loss Payee and shall include a Lender's Loss Payable Endorsement (Form #438BFU).

ARTICLE 6. REPRESENTATIONS AND WARRANTIES

As a material inducement to the Agency's entry into this Disbursement Agreement, Borrower represents and warrants to the Agency as of the Effective Date and continuing thereafter that:

6.1 AUTHORITY/ENFORCEABILITY. Borrower is in compliance with all laws and regulations applicable to its organization, existence and transaction of business and has all necessary rights and powers to own, develop and operate the Development and Improvements as contemplated by the MHSA Permanent Loan Documents.

6.2 BINDING OBLIGATIONS. Borrower is authorized to execute, deliver and perform its obligations under the MHSA Permanent Loan Documents, and such obligations shall be valid and binding

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obligations of Borrower. Specifically Borrower designates the Authorized Signatory to make requests for Disbursements.

6.3 FAILURE TO PERFORM. If Borrower fails to perform any of its obligations under this Disbursement Agreement or the other MHSA Permanent Loan Documents, Borrower agrees that the Agency may take any actions and expend any sums that may be necessary, in the Agency's judgment, to preserve the Agency's security interest, and all such expenditures (including attorney fees) shall promptly be repaid by the Borrower upon demand.

6.4 NO VIOLATION. Borrower's execution, delivery, and performance under the MHSA Permanent Loan Documents do not: (a) require any consent or approval not heretofore obtained under any partnership agreement, operating agreement, articles of incorporation, bylaws or other document; (b) violate any governmental requirement applicable to the Development and Improvements or any other statute, law, regulation or ordinance or any order or ruling of any court or governmental entity; (c) conflict with, or constitute a breach or default or permit the acceleration of obligations under any agreement, contract, lease, or other document by which the Borrower is or the Development and Improvements are bound or regulated; or (d) violate any statute, law, regulation or ordinance, or any order of any court or governmental entity.

6.5 COMPLIANCE WITH LAWS. Borrower has, and at all times shall have obtained, all permits, licenses, exemptions, and approvals necessary to construct, occupy, operate and market the Development and Improvements, and shall maintain compliance with all governmental requirements applicable to the Development and Improvements and all other applicable statutes, laws, regulations and ordinances necessary for the transaction of its business. The Development is a legal parcel lawfully created in full compliance with all subdivision laws and ordinances.

6.6 LITIGATION. Except as disclosed to the Agency in writing, there are no claims, actions, suits, or proceedings pending, or to Borrower's knowledge threatened, against Borrower or affecting the Development or Improvements.

6.7 FINANCIAL CONDITION. All financial statements and information heretofore and hereafter delivered to the Agency by Borrower, including, without limitation, information relating to the financial condition of Borrower, the Development, the Improvements, the partners, joint venturers or members of Borrower and/or any Guarantors, fairly and accurately represent the financial condition of the subject thereof and there are no material adverse changes, and have been prepared (except as noted therein) in accordance with generally accepted accounting principles consistently applied. Borrower acknowledges and agrees that the Agency may request and obtain additional information from third parties regarding any of the above, including, without limitation, credit reports.

6.8 ACCURACY. All reports, documents, instruments, information and forms of evidence delivered to the Agency concerning the MHSA Permanent Loan or security for the MHSA Permanent Loan or required by the MHSA Permanent Loan Documents are accurate, correct and sufficiently complete to give the Agency true and accurate knowledge of their subject matter, and do not contain any misrepresentation or omission.

6.9 OTHER FINANCIAL AGREEMENTS. Borrower has complied with, and shall continue to comply with, all conditions and obligations relating to other sources of financing related to and for the benefit of the Development.

ARTICLE 7. HAZARDOUS MATERIALS

7.1 **SPECIAL REPRESENTATIONS AND WARRANTIES.** Without in any way limiting the other representations and warranties set forth in this Disbursement Agreement, Borrower hereby specially represents and warrants to the best of Borrower's knowledge as of the date of this Disbursement Agreement as follows:

(a) **Hazardous Materials.** Except as disclosed in the Phase I environmental reports, the Development is not and has not been a site for the use, generation, manufacture, storage, treatment, release, threatened release, discharge, disposal, transportation or presence of any oil, flammable explosives, asbestos, urea formaldehyde insulation, radioactive materials, hazardous wastes, toxic or contaminated substances or similar materials, including, without limitation, any substances which are “hazardous substances,” “hazardous wastes,” “hazardous materials,” “toxic substances,” “wastes,” “regulated substances,” “industrial solid wastes,” or “pollutants” under the Hazardous Materials Laws, as described below, and/or other applicable environmental laws, ordinances and regulations but excluding any materials commonly used in the construction or operation of multifamily housing projects if used in accordance with all applicable requirements (collectively, the “**Hazardous Materials**”).

(b) **Hazardous Materials Laws.** The Development and Improvements are in compliance with all laws, ordinances and regulations relating to Hazardous Materials (“**Hazardous Materials Laws**”), including, without limitation: the Clean Air Act, as amended, 42 U.S.C. Section 7401 et seq.; the Federal Water Pollution Control Act, as amended, 33 U.S.C. Section 1251 et seq.; the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. Section 6901 et seq.; the Comprehensive Environment Response, Compensation and Liability Act of 1980, as amended (including the Superfund Amendments and Reauthorization Act of 1986, “CERCLA”), 42 U.S.C. Section 9601 et seq.; the Toxic Substances Control Act, as amended, 15 U.S.C. Section 2601 et seq.; the Occupational Safety and Health Act, as amended, 29 U.S.C. Section 651; the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. Section 11001 et seq.; the Mine Safety and Health Act of 1977, as amended, 30 U.S.C. Section 801 et seq.; the Safe Drinking Water Act, as amended, 42 U.S.C. Section 300f et seq.; and all comparable state and local laws, laws of other jurisdictions or orders and regulations.

(c) **Hazardous Materials Claims.** There are no claims or actions pending or threatened against Borrower, the Development or Improvements by any governmental entity or agency or by any other person or entity relating to Hazardous Materials or pursuant to the Hazardous Materials Laws (“**Hazardous Materials Claims**”).

(d) **Border Zone Property.** The Development has not been designated as Border Zone Property under the provisions of California Health and Safety Code, Sections 25220 et seq. and there has been no occurrence or condition on any real property adjoining or in the vicinity of the Development that could cause the Development or any part thereof to be designated as Border Zone Property.

7.2 **HAZARDOUS MATERIALS COVENANTS.** Borrower agrees as follows:

(a) **No Hazardous Activities.** Borrower shall not cause or permit the Development or Improvements to be used as a site for the use, generation, manufacture, storage, treatment, release, discharge, disposal, transportation or presence of any Hazardous Materials.

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(b) Compliance. Borrower shall comply and cause the Development and Improvements to comply with all Hazardous Materials Laws.

(c) Notices. Borrower shall immediately notify the Agency in writing of: (i) the discovery of any Hazardous Materials on, under or about the Development and Improvements; (ii) any knowledge by Borrower that the Development and Improvements do not comply with any Hazardous Materials Laws; (iii) any Hazardous Materials Claims; and (iv) the discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Development that could cause the Development or any part thereof to be designated as Border Zone Property.

(d) Remedial Action. In response to the presence of any Hazardous Materials on, under or about the Development or Improvements, Borrower shall immediately take, at Borrower's sole expense, all remedial action required by any Hazardous Materials Laws or any judgment, consent decree, settlement or compromise in respect to any Hazardous Materials Claims.

7.3 HAZARDOUS MATERIALS INDEMNITY. BORROWER HEREBY AGREES TO DEFEND, INDEMNIFY AND HOLD HARMLESS THE AGENCY, ITS DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, SUCCESSORS AND ASSIGNS FROM AND AGAINST ANY AND ALL LOSSES, DAMAGES, LIABILITIES, CLAIMS, ACTIONS, JUDGMENTS, COURT COSTS AND LEGAL OR OTHER EXPENSES (INCLUDING, WITHOUT LIMITATION, REASONABLE ATTORNEY FEES AND EXPENSES) WHICH THE AGENCY MAY INCUR AS A DIRECT OR INDIRECT CONSEQUENCE OF THE USE, GENERATION, MANUFACTURE, STORAGE, DISPOSAL, THREATENED DISPOSAL, TRANSPORTATION OR PRESENCE OF HAZARDOUS MATERIALS IN, ON, UNDER OR ABOUT THE DEVELOPMENT OR IMPROVEMENTS. BORROWER SHALL IMMEDIATELY PAY TO THE AGENCY UPON DEMAND ANY AMOUNTS OWING UNDER THIS INDEMNITY, TOGETHER WITH INTEREST FROM THE DATE THE INDEBTEDNESS ARISES UNTIL PAID AT THE RATE OF INTEREST APPLICABLE TO THE PRINCIPAL BALANCE OF THE MHSA PROMISSORY NOTE. BORROWER'S DUTY AND OBLIGATIONS TO DEFEND, INDEMNIFY AND HOLD HARMLESS THE AGENCY SHALL SURVIVE THE CANCELLATION OF THE MHSA PROMISSORY NOTE AND THE RELEASE, RECONVEYANCE OR PARTIAL RECONVEYANCE OF THE MHSA DEED OF TRUST.

7.4 LEGAL EFFECT OF SECTION. Borrower and the Agency agree that: (a) this Article 7 is intended as the Agency's written request for information (and Borrower's response) concerning the environmental condition of the real property security as required by California Code of Civil Procedure § 726.5; and (b) each provision in this Article (together with any indemnity applicable to a breach of any such provision) with respect to the environmental condition of the real property security is intended by the Agency and Borrower to be an "environmental provision" for purposes of California Code of Civil Procedure § 736, and as such it is expressly understood that Borrower's duty to indemnify the Agency hereunder shall survive: (i) any judicial or non-judicial foreclosure under the MHSA Deed of Trust, or transfer of the Development in lieu thereof; (ii) the release and reconveyance or cancellation of the MHSA Deed of Trust; and (iii) the satisfaction of all of Borrower's obligations under the MHSA Permanent Loan Documents.

ARTICLE 8. COVENANTS OF BORROWER

8.1 EXPENSES. Borrower shall immediately pay the Agency upon demand all costs and expenses incurred by the Agency in connection with: (a) to the extent provided in the Commitment, the preparation of this Disbursement Agreement, all other MHSA Permanent Loan Documents and other related documents contemplated hereby; and (b) the enforcement or satisfaction by the Agency of any of Borrower's obligations under this Disbursement Agreement, the other MHSA Permanent Loan Documents or the other related documents. If applicable, for all purposes of this Disbursement Agreement, the Agency's costs and expenses shall include, without limitation, all appraisal fees, construction inspection fees, legal fees and expenses, accounting fees, environmental consultant fees, auditor fees, UCC filing fees and/or UCC vendor fees, and the cost to the Agency of any title insurance premiums, title surveys, reconveyance and notary fees. Borrower recognizes and agrees that formal written appraisals of the Development and Improvements by a licensed independent appraiser may be required by the Agency's internal procedures and/or federal regulatory reporting requirements on an annual and/or specialized basis and that the Agency may, at its option, require inspection of the Development and Improvements by an independent supervising architect and/or engineer: (i) prior to each Disbursement; (ii) at least once each month during the course of construction even though no Disbursement is to be made for that month; (iii) upon completion of the Improvements; and (iv) at least semi-annually thereafter. If any of the services described above are provided by an employee of the Agency, the Agency's costs and expenses for such services shall be calculated in accordance with the Agency's standard charge for such services.

8.2 TAX CREDIT INVESTMENT (if applicable).

Borrower's Obligations. Borrower shall: (a) timely do or cause to be done everything necessary to satisfy all conditions to the funding of the capital contributions; (b) not commit any breach or default under the its organizational documents; (c) maintain its organizational documents in full force and effect until all sums owing to the Agency with respect to the MHSA Permanent Loan have been paid; and (d) except as necessary to admit tax credit investor as a limited partner or to permit tax credit investor to transfer its interest to the extent permitted by, and subject to any condition in the MHSA Regulatory Agreement, not consent to any termination, amendment or modification of its organizational documents without the Agency's prior written consent.

8.3 OTHER FINANCING. If Borrower has obtained any other commitments for a Construction Loan or permanent financing, Borrower shall not: (a) commit any breach or default under such commitments; (b) fail to maintain such commitments in full force and effect; or (c) consent to any termination, amendment or modification of such commitments without the Agency's prior written consent.

8.4 LEASING. After completion of the Improvements and issuance of a Certificate of Occupancy or Notice of Completion, Borrower shall use its best efforts to lease one hundred percent (100%) of the residential units in the Development to tenants and at rental rates approved by the Agency and consistent with the MHSA Regulatory Agreement, and all other restrictions recorded against the Development and on a lease form which may be subject to approval by the Agency, which approval shall not be unreasonably withheld or delayed.

8.5 SUBDIVISION MAPS. Prior to recording any final map, plat, parcel map, lot line adjustment or other subdivision map of any kind covering any portion of the Development (collectively, "**Subdivision Map**"), Borrower shall submit such Subdivision Map to the Agency for the Agency's review

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and approval, which approval shall not be unreasonably withheld. Within five (5) Business Days after the Agency's request, Borrower shall execute, acknowledge and deliver to the Agency such amendments to the MHSA Permanent Loan Documents as the Agency may reasonably require to reflect the change in the legal description of the Development resulting from the recordation of any Subdivision Map. In connection with and promptly after the recordation of any amendment or other modification to the MHSA Deed of Trust recorded in connection with such amendments, Borrower shall deliver to the Agency, at Borrower's sole expense, a title endorsement to the title policy in form and substance satisfactory to the Agency insuring the continued _____ priority lien of the MHSA Deed of Trust. Subject to the execution and delivery by Borrower of any documents required under this Section, the Agency shall, if required by applicable law, sign any Subdivision Map approved by the Agency pursuant to this Section.

8.6 FURTHER ASSURANCES. Upon the Agency's request and at Borrower's sole cost and expense, Borrower shall execute, acknowledge and deliver any other instruments and perform any other acts necessary, desirable or proper, as determined by the Agency, to carry out the purposes of this Disbursement Agreement and the other MHSA Permanent Loan Documents or to perfect and preserve any liens created by the MHSA Permanent Loan Documents.

8.7 ASSIGNMENT. Without the prior written consent of the Agency, Borrower shall not assign Borrower's interest under any of the MHSA Permanent Loan Documents, or in any monies due or to become due thereunder, and any assignment without such consent shall be void. In this regard, Borrower acknowledges that the Agency would not make this MHSA Permanent Loan except in reliance on Borrower's expertise, reputation, prior experience in developing and constructing commercial real property, and the Agency's knowledge of Borrower.

8.8 NO AMENDMENT. Except as otherwise permitted by the terms of this Disbursement Agreement, Borrower shall not materially amend or materially modify, nor shall Borrower terminate, any of the following documents without the Agency's prior written consent (which shall not be unreasonably withheld or delayed) and shall keep in full force and effect the following documents, and Borrower shall comply with all terms and provisions thereof: (a) Construction Contract; (b) Architect's Agreement; (c) Engineers' Agreements; and/or (d) Management Agreement.

8.9 PERMITS. Borrower shall have provided all necessary building and grading permits for construction of the Improvements to the Agency prior to the MHSA Permanent Loan Closing Date or as soon thereafter as they are customarily available in the ordinary course.

8.10 PROVISIONS TO BE INCLUDED IN CONTRACTS. Borrower agrees that it will include in the Construction Contract and will include or cause the Contractor to include in all agreements with subcontractors (which term for the purpose of this section also shall include material suppliers and equipment lessors) a provision that if the Contractor or any officers or director of the Contractor, or any stockholder holding ten percent (10%) or more of the voting stock of the Contractor, or any person having directly or indirectly an interest of ten percent (10%) or more in the Contractor, also is a subcontractor or material supplier or stockholder holding ten percent (10%) or more of the voting stock of a subcontractor or material supplier, or directly or indirectly has an interest of ten percent (10%) or more in a subcontractor or material supplier, then the Contractor shall disclose in writing to the Agency the identity of such subcontractor or material supplier and obtain the written approval of the Agency to their use; and if such subcontractor or material supplier is approved by the Agency, the Contractor shall certify simultaneously with the request for any payment to them that the amount paid to them is a fair and reasonable price for the work or materials.

ARTICLE 9. DEFAULTS AND REMEDIES

9.1 DEFAULT. The occurrence of any one or more of the following shall constitute an event of default (“**Default**”) under this Disbursement Agreement and the other MHSA Permanent Loan Documents:

(a) Performance of Obligations. Borrower's failure to perform any other obligation under any of the MHSA Permanent Loan Documents; provided, however, that if a cure period is provided for the remedy of such failure, Borrower's failure to perform will not constitute a Default until such date as the specified cure period expires; or

(b) Representations and Warranties. The failure of any representation or warranty of Borrower in any of the MHSA Permanent Loan Documents, including the Commitment, and the continuation of such failure for more than ten (10) days after written notice to Borrower from the Agency requesting that Borrower cure such failure; or

(c) Construction; Use. (i) There is any material deviation in the Work or Construction from the Plans and Specifications or governmental requirements or the appearance or use of defective workmanship or materials in constructing the Improvements, and Borrower fails to remedy the same to the Agency's satisfaction within thirty (30) days of the Agency's written demand to do so; or (ii) there is a cessation of construction of the Improvements prior to completion for a continuous period of more than fifteen (15) days (except as caused by an event of force majeure for which a longer delay may be permitted under Article 4); or (iii) the construction, sale or leasing of any of the Improvements in accordance with the MHSA Permanent Loan Documents is prohibited, enjoined or delayed for a continuous period of more than thirty (30) days (except as caused by an event of force majeure for which a longer delay may be permitted under Article 4); or (iv) utilities or other public services necessary for the full occupancy and utilization of the Development and Improvements are curtailed for a continuous period of more than thirty (30) days; or

(d) Liens, Attachment; Condemnation. (i) The recording of any claim of lien against the Development or Improvements or the service on the Agency of any bonded stop notice relating to the MHSA Permanent Loan and the continuance of such claim of lien or bonded stop notice for twenty (20) days without discharge, satisfaction or provision for payment being made by Borrower in a manner satisfactory to the Agency; or (ii) the condemnation, seizure or appropriation of, or occurrence of an uninsured casualty with respect to any material portion of the Development or Improvements; or (iii) the sequestration or attachment of, or any levy or execution upon any of the Development or Improvements, any other collateral provided by Borrower under any of the MHSA Permanent Loan Documents, or any substantial portion of the other assets of Borrower, which sequestration, attachment, levy or execution is not released, expunged or dismissed prior to the earlier of thirty (30) days or the sale of the assets affected thereby; or

(e) Voluntary Bankruptcy; Insolvency; Dissolution. (i) The filing of a petition by Borrower for relief under the bankruptcy or laws related to insolvency, or under any other present or future state or federal law regarding bankruptcy, reorganization or other debtor relief law; or (ii) the filing of any pleading or an answer by Borrower in any involuntary proceeding under the Bankruptcy Code or other debtor relief law which admits the jurisdiction of the court or the petition's material allegations regarding Borrower's insolvency; or (iii) a general assignment by Borrower for the benefit of creditors; or

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(iv) Borrower applying for, or the appointment of, a receiver, trustee, custodian or liquidator of Borrower or any of its property; or

(f) Involuntary Bankruptcy. The failure of Borrower to effect a full dismissal of any involuntary petition under the bankruptcy or laws related to insolvency or under any other debtor relief law that is filed against Borrower or in any way restrains or limits Borrower or the Agency regarding the MHSA Permanent Loan, the Development or the Improvements, prior to the earlier of the entry of any court order granting relief sought in such involuntary petition, or sixty (60) days after the date of filing of such involuntary petition; or

(g) Partners; Guarantors. The occurrence of any of the events specified in Section 9.1(e) or 9.1(f) as to any Guarantor or General Partner or managing member of Borrower; or

(h) Prohibited Transfers. Except as permitted in the MHSA Regulatory Agreement, the transfer of any interest in the Development or the transfer of equity interests in Borrower; or

(i) Loss of Priority. The failure at any time of the MHSA Deed of Trust to be a valid lien upon the Development and Improvements or any portion thereof, other than as a result of any release or reconveyance of the MHSA Deed of Trust with respect to all or any portion of the Property and Improvements pursuant to the terms and conditions of this Disbursement Agreement; or

(j) Hazardous Materials. The discovery of any significant Hazardous Materials not disclosed in the Phase I report in, on or about the Development or Improvements subsequent to the Effective Date. Any such Hazardous Materials shall be “significant” for this purpose if said Hazardous Materials, in the Agency's sole discretion, have a materially adverse impact on the value of the Development and Improvements; or

(k) Loans. The occurrence of a default under any other commitments or loans for the construction or permanent financing of any portion of the Development, after expiration of applicable cure periods; or

(l) Tax Credit Investor's Bankruptcy. The occurrence of any of the events specified in Sections 9.1(e) and 9.1(f) of this Disbursement Agreement with respect to Tax Credit Investor unless Borrower has identified a new Tax Credit Investor within sixty (60) days satisfactory to the Agency in the Agency's sole discretion and such new Tax Credit Investor has been admitted as a limited partner in Borrower within thirty (30) days after the expiration of such sixty (60) day period pursuant to an amendment to Borrower's Partnership Agreement and any related documents reasonably satisfactory to the Agency; or

(m) Tax Credits. Failure to remain in compliance with the California Tax Credit Allocation Committee requirements or the expiration of the tax credits; or

(n) Adverse Financial Condition. Any material adverse change in the financial condition of Borrower, General Partner, Guarantor, or Tax Credit Investor from the condition shown on the financial statement(s) submitted to the Agency and relied upon by the Agency in making the MHSA Permanent Loan, the materiality and adverse effect of such change in financial condition to be reasonably determined by the Agency in accordance with its credit standards and underwriting practices in effect at the time of making such determination; or

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(o) Taxes and Insurance. Failure of the Borrower to pay when due all premiums or amounts owing for property taxes and insurance related to the Development; or

(p) Organizational Documents. The occurrence of a default under the Borrower's organizational documents after expiration of applicable cure periods.

9.2 ACCELERATION UPON DEFAULT; REMEDIES. Upon the occurrence of any Default specified in this Article 9, the Agency may, at its sole option, declare all sums owing to the Agency under the MHSA Promissory Note, this Disbursement Agreement and the other MHSA Permanent Loan Documents immediately due and payable. Upon such acceleration, the Agency may, in addition to all other remedies permitted under this Disbursement Agreement and the other MHSA Permanent Loan Documents and at law or equity, apply any sums held by the Agency to the sums owing under the MHSA Permanent Loan Documents and any and all obligations of the Agency to fund further Disbursements under the MHSA Permanent Loan shall terminate.

9.3 DISBURSEMENT TO THIRD PARTIES. Upon the occurrence of a Default occasioned by Borrower's failure to pay money to a third party as required by Sections 9.1 (k) or 9.1(o), the Agency may but shall not be obligated to make such payment from the MHSA Permanent Loan proceeds, or other funds held by the Agency. If such payment is made from proceeds of the MHSA Permanent Loan, Borrower shall immediately deposit with the Agency, upon written demand, an amount equal to such payment. If such payment is made from funds of the Agency, Borrower shall immediately repay such funds upon written demand of the Agency. In either case, the Default with respect to which any such payment has been made by the Agency shall not be deemed cured until such deposit or repayment (as the case may be) has been made by Borrower to the Agency.

9.4 AGENCY'S COMPLETION OF CONSTRUCTION. Upon the occurrence of a Default, the Agency may (but shall not be obligated to), and upon five (5) days prior written notice to Borrower, and with or without legal process, take possession of the Development and Improvements, remove Borrower and all agents, employees and contractors of Borrower from the Development and Improvements, complete the work of construction and market, operate and sell or lease the Development and/or Improvements. For this purpose, Borrower irrevocably appoints the Agency as its attorney-in-fact. As attorney-in-fact, the Agency may, in Borrower's name, take or omit to take any action the Agency may deem appropriate, including, without limitation, exercising Borrower's rights under the MHSA Permanent Loan Documents and all contracts concerning the Development and/or Improvements.

9.5 AGENCY'S CESSATION OF CONSTRUCTION. If the Agency determines at any time that the Improvements are not being constructed in accordance with the Plans and Specifications and all governmental requirements, the Agency may immediately cause all construction to cease on any of the Improvements affected by the condition of nonconformance. Borrower shall thereafter not allow any construction work, other than corrective work, to be performed on any of the Improvements affected by the condition of nonconformance until such time as the Agency notifies Borrower in writing that the nonconforming condition has been corrected.

9.6 REPAYMENT OF FUNDS ADVANCED. Any funds expended by the Agency in the exercise of its rights or remedies under this Disbursement Agreement and the other MHSA Permanent Loan Documents shall be payable to the Agency upon demand, together with interest at a rate of ten percent (10%) from the date the funds were expended.

9.7 RIGHTS CUMULATIVE, NO WAIVER. All the Agency's rights and remedies provided in this Disbursement Agreement and the other MHSA Permanent Loan Documents, together with those granted by law or at equity, are cumulative and may be exercised by the Agency at any time. The Agency's exercise of any right or remedy shall not constitute a cure of any Default unless all sums then due and payable to the Agency under the MHSA Permanent Loan Documents are repaid and Borrower has cured all other Defaults. No waiver shall be implied from any failure of the Agency to take, or any delay by the Agency in taking, action concerning any Default or failure of condition under the MHSA Permanent Loan Documents, or from any previous waiver of any similar or unrelated Default or failure of condition. Any waiver or approval under any of the MHSA Permanent Loan Documents must be in writing and shall be limited to its specific terms.

ARTICLE 10. MISCELLANEOUS PROVISIONS

10.1 INDEMNITY. BORROWER HEREBY AGREES TO DEFEND, INDEMNIFY AND HOLD HARMLESS THE AGENCY, ITS DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, SUCCESSORS AND ASSIGNS FROM AND AGAINST ANY AND ALL LOSSES, DAMAGES, LIABILITIES, CLAIMS, ACTIONS, JUDGMENTS, COURT COSTS AND LEGAL OR OTHER EXPENSES (INCLUDING, WITHOUT LIMITATION, REASONABLE ATTORNEY FEES AND EXPENSES), EXCEPT ARISING SOLELY FROM THE AGENCY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, WHICH THE AGENCY MAY INCUR AS A DIRECT OR INDIRECT CONSEQUENCE OF: (A) THE PURPOSE TO WHICH BORROWER APPLIES THE MHSA PERMANENT LOAN PROCEEDS; (B) THE FAILURE OF BORROWER TO PERFORM ANY OBLIGATIONS AS AND WHEN REQUIRED BY THIS DISBURSEMENT AGREEMENT OR ANY OF THE OTHER MHSA PERMANENT LOAN DOCUMENTS; (C) ANY FAILURE AT ANY TIME OF ANY OF BORROWER'S REPRESENTATIONS OR WARRANTIES TO BE TRUE AND CORRECT; OR (D) ANY ACT OR OMISSION BY BORROWER, CONSTITUENT PARTNER OR MEMBER OF BORROWER, ANY CONTRACTOR, SUBCONTRACTOR OR MATERIAL SUPPLIER, ENGINEER, ARCHITECT OR OTHER PERSON OR ENTITY WITH RESPECT TO ANY OF THE DEVELOPMENT OR IMPROVEMENTS. BORROWER SHALL IMMEDIATELY PAY TO THE AGENCY UPON DEMAND ANY AMOUNTS OWING UNDER THIS INDEMNITY, TOGETHER WITH INTEREST FROM THE DATE THE INDEBTEDNESS ARISES UNTIL PAID AT THE RATE OF INTEREST OF TEN PERCENT (10%). BORROWER'S DUTY AND OBLIGATIONS TO DEFEND, INDEMNIFY AND HOLD HARMLESS THE AGENCY SHALL SURVIVE CANCELLATION OF THE MHSA PROMISSORY NOTE AND THE RELEASE, RECONVEYANCE OR PARTIAL RECONVEYANCE OF THE MHSA DEED OF TRUST. With respect to principal and interest owed on the MHSA Promissory Note, the foregoing indemnification obligation is subject to the limitations on recourse in the MHSA Promissory Note and MHSA Deed of Trust.

10.2 FORM OF DOCUMENTS. Upon the Agency's demand, the form and substance of all documents, instruments, and forms of evidence to be delivered to the Agency under the terms of this Disbursement Agreement and any of the other MHSA Permanent Loan Documents shall be subject to the Agency's approval and shall not be modified, superseded or terminated in any respect without the Agency's prior written approval.

10.3 NO THIRD PARTIES BENEFITED. Unless otherwise agreed to by the Agency, no person other than the Agency and Borrower and their permitted successors and assigns shall have any right of action under any of the MHSA Permanent Loan Documents. This provision shall not impair the right of any limited partner of Borrower to cure any Default on Borrower's behalf.

10.4 NOTICES. All notices, demands, or other communications under this Disbursement Agreement and the other MHSA Permanent Loan Documents shall be in writing and shall be delivered to the appropriate party at the address set forth on the signature page of this Disbursement Agreement. All notices, demands or other communications shall be considered as properly given if delivered personally or sent by first class United States Postal Service mail, postage prepaid, except that notice of a Default may be sent by certified mail, return receipt requested, or by overnight express mail or by overnight commercial courier service, charges prepaid. Notices so sent shall be effective three (3) Business Days after mailing, if mailed by first class mail, and otherwise upon receipt; provided, however, that non-receipt of any communication as the result of any change of address of which the sending party was not notified or as the result of a refusal to accept delivery shall be deemed receipt of such communication.

10.5 ATTORNEY-IN-FACT. Borrower hereby irrevocably appoints and authorizes the Agency, as Borrower's attorney-in-fact, which agency is coupled with an interest, to execute and/or record in the Agency's or Borrower's name any notices, financing statements, instruments or documents that the Agency deems appropriate to perfect or protect the Agency's interest under any of the MHSA Permanent Loan Documents.

10.6 RIGHT OF CONTEST. Borrower may contest in good faith any claim, demand, levy or assessment (other than liens and stop notices) by any person other than the Agency which would constitute a Default if: (a) Borrower pursues the contest diligently, in a manner which the Agency determines is not prejudicial to the Agency, and does not impair the rights of the Agency under any of the MHSA Permanent Loan Documents; and (b) Borrower deposits with the Agency any funds or other forms of assurance which the Agency in good faith determines from time to time appropriate to protect the Agency from the consequences of the contest being unsuccessful. Borrower's compliance with this Section shall operate to prevent such claim, demand, levy or assessment from becoming a Default.

10.7 RELATIONSHIP OF PARTIES. The relationship of Borrower and the Agency under the MHSA Permanent Loan Documents is, and shall at all times remain, solely that of borrower and lender, and the Agency neither undertakes nor assumes any responsibility or duty to Borrower or to any third party with respect to the Development or Improvements, except as expressly provided in this Disbursement Agreement and the other MHSA Permanent Loan Documents.

10.8 DELAY OUTSIDE THE AGENCY'S CONTROL. The Agency shall not be liable in any way to Borrower or any third party for the Agency's failure to perform or delay in performing under the MHSA Permanent Loan Documents (and the Agency may suspend or terminate all or any portion of the Agency's obligations under the MHSA Permanent Loan Documents) if such failure to perform or delay in performing results directly or indirectly from, or is based upon, the action, inaction, or purported action, of any governmental or local authority, or because of war, rebellion, insurrection, strike, lock-out, boycott or blockade (whether presently in effect, announced or in the sole judgment of the Agency deemed probable), or from any Act of God or other cause or event beyond the Agency's control.

10.9 ATTORNEY FEES AND EXPENSES; ENFORCEMENT. If any attorney is engaged by the Agency to enforce or defend any provision of this Disbursement Agreement, any of the other MHSA Permanent Loan Documents or other related documents, or as a consequence of any Default under the MHSA Permanent Loan Documents, with or without the filing of any legal action or proceeding, and including, without limitation, any fees and expenses incurred in any bankruptcy proceeding of the Borrower, then Borrower shall immediately pay to the Agency, upon demand, the amount of all attorney fees and expenses and all costs incurred by the Agency in connection therewith, including allocated fees

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and expenses of the Agency's in-house counsel, together with interest thereon from the date of such demand until paid at the rate of interest of ten percent (10%).

10.10 AGENCY'S CONSENT. Wherever in this Disbursement Agreement there is a requirement for the Agency's consent and/or a document to be provided or an action taken "to the satisfaction of the Agency", it is understood by such phrase that the Agency shall exercise its consent, right or judgment in a reasonable manner given the specific facts and circumstance applicable at the time.

10.11 AGENCY'S AGENTS. The Agency may designate an agent or independent contractor to exercise any of the Agency's rights under this Disbursement Agreement and any of the other MHSA Permanent Loan Documents. Any reference to the Agency in any of the MHSA Permanent Loan Documents shall include the Agency's agents, employees or independent contractors. Borrower shall pay the costs of such agent or independent contractor either directly to such person or to the Agency in reimbursement of such costs, as applicable.

10.12 TAX SERVICE. The Agency is authorized to secure, at Borrower's expense, a tax service contract with a third party vendor which shall provide tax information on the Development and Improvements satisfactory to the Agency.

10.13 SEVERABILITY. If any provision or obligation under this Disbursement Agreement and the other MHSA Permanent Loan Documents shall be determined by a court of competent jurisdiction to be invalid, illegal or unenforceable, that provision shall be deemed severed from the MHSA Permanent Loan Documents and the validity, legality and enforceability of the remaining provisions or obligations shall remain in full force as though the invalid, illegal, or unenforceable provision had never been a part of the MHSA Permanent Loan Documents, provided, however, that if the rate of interest or any other amount payable under the MHSA Promissory Note or this Disbursement Agreement or any other MHSA Permanent Loan Document, or the right of collectibility therefor, is declared to be or become invalid, illegal or unenforceable, the Agency's obligations to make Disbursements under the MHSA Permanent Loan Documents shall not be enforceable by Borrower.

10.14 HEIRS, SUCCESSORS AND ASSIGNS. Except as otherwise expressly provided under the terms and conditions of this Disbursement Agreement, the terms of the MHSA Permanent Loan Documents shall bind and inure to the benefit of the heirs, successors and assigns of the parties.

10.15 TIME. Time is of the essence of each and every term of this Disbursement Agreement.

10.16 HEADINGS. All article, section or other headings appearing in this Disbursement Agreement and any of the other MHSA Permanent Loan Documents are for convenience of reference only and shall be disregarded in construing this Disbursement Agreement and any of the other MHSA Permanent Loan Documents.

10.17 GOVERNING LAW. This Disbursement Agreement shall be governed by, and construed and enforced in accordance with the laws of the State of California, except to the extent preempted by federal laws. Borrower and all persons and entities in any manner obligated to the Agency under the MHSA Permanent Loan Documents consent to the jurisdiction of any federal or state court within the State of California having proper venue and also consent to service of process by any means authorized by California or federal law.

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10.18 INTEGRATION; INTERPRETATION. The MHSA Permanent Loan Documents contain or expressly incorporate by reference the entire agreement of the parties with respect to the matters contemplated therein and supersede all prior negotiations or agreements, written or oral. The MHSA Permanent Loan Documents shall not be modified except by written instrument executed by all parties. Any reference to the MHSA Permanent Loan Documents includes any amendments, renewals or extensions now or hereafter approved by the Agency in writing.

10.19 JOINT AND SEVERAL LIABILITY. The liability of all persons and entities obligated in any manner under this Disbursement Agreement and any of the MHSA Permanent Loan Documents shall be joint and several.

10.20 COUNTERPARTS. To facilitate execution, this document may be executed in as many counterparts as may be convenient or required. It shall not be necessary that the signature of, or on behalf of, each party, or that the signature of all persons required to bind any party, appear on each counterpart. All counterparts shall collectively constitute a single document. It shall not be necessary in making proof of this document to produce or account for more than a single counterpart containing the respective signatures of, or on behalf of, each of the parties hereto. Any signature page to any counterpart may be detached from such counterpart without impairing the legal effect of the signatures thereon and thereafter attached to another counterpart identical thereto except having attached to it additional signature pages.

10.21 CURE OF DEFAULTS. Notwithstanding anything to the contrary herein any cure of any Default made or tendered by any limited partner of Borrower shall be deemed to be a cure tendered by Borrower and shall be accepted or rejected on the same basis as if made or tendered by the Borrower.

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10.22 SIGNS. Borrower shall prominently display a sign at the construction site with information as described in Section VIII.A. of the MHSA Final Commitment Letter.

IN WITNESS WHEREOF, Borrower and the Agency have executed this Disbursement Agreement as of the date appearing on the first page of this Disbursement Agreement.

BORROWER:

[borrower],
a California limited partnership

By: [general partner], a California nonprofit
public benefit corporation, its general partner

By: ***DRAFT – Do Not Execute***
Name: _____
Title: _____

AGENCY:

**CALIFORNIA HOUSING FINANCE
AGENCY**, a public instrumentality and a political
subdivision of the State of California

By: _____
Name: _____
Title: _____

Borrower's Address:

Agency's Address:

California Housing Finance Agency
1415 L Street, Suite 500
Sacramento, CA 95814
Attn: Office of General Counsel
CalHFA Development No. [loan no.]

Exhibits

- A Legal Description
- B Construction Schedule
- C Description of Plans and Specifications
- D Construction Budget and Disbursement Plan

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EXHIBIT A – DESCRIPTION OF PROPERTY

Property Description

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EXHIBIT B – CONSTRUCTION SCHEDULE

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EXHIBIT C – DESCRIPTION OF PLANS AND SPECIFICATIONS

EXHIBIT D

**CONSTRUCTION BUDGET AND
DISBURSEMENT PLAN**

(Continuation of Exhibit D)

1. Timing of Disbursement. **Borrower shall submit, and the Agency shall process, only one request for Disbursement per month.** Borrower shall submit a completed request for Disbursement at least ten (10) Business Days before the Disbursement is desired to:

California Housing Finance Agency Multifamily Programs Disbursement Administrator 1415 L Street, Suite 650 Sacramento, California 95814
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Such request for Disbursement shall include a CalHFA Pay Request signed by an Authorized Signatory and, if applicable, an “Application for Payment” on AIA Forms G702 and G703 setting forth:

1.1 A description of the Work performed, material supplied and/or costs incurred or due for which Disbursement is requested with respect to any line item (“**Item**”) shown in Column ___ of the cost budget titled “Uses of Funds” included in this **Exhibit D** to this Disbursement Agreement; and

1.2 The total amount incurred, expended and/or due for each requested Item less prior Disbursements.

1.3 Each request for Disbursement by Borrower shall constitute a representation and warranty by Borrower that Borrower is in compliance with all the conditions precedent to a Disbursement specified in this Disbursement Agreement.

2. Agency's Right to Condition Disbursements. The Agency shall have the right to condition any Disbursement upon the Agency's receipt and approval of the following:

2.1 The Application for Payment on AIA Forms G702 and G703 and an itemized requisition for payment of line item ___ shown in the Disbursement Budget (“**Hard Costs**”), signed by Borrower, Architect and Contractor;

2.2 Bills, invoices, documents of title, vouchers, statements, payroll records, receipts, prevailing wage certifications, and any other documents evidencing the total amount expended, incurred or due for any requested Items;

2.3 Title endorsements insuring no additional liens, newly recorded mechanics liens, delinquent tax or assessment liens and insuring the current vesting of title and priority for the new Disbursement;

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2.4 Architect's, inspector's and/or engineer's periodic certifications of the percentage and/or stage of construction that has been completed and its conformance to the Plans and Specifications and governmental requirements based upon any such architect's, inspector's and/or engineer's periodic physical inspections of the Development and Improvements;

2.5 Evidence of Waivers and Releases in form and substance acceptable to the Agency on progress payments and final payment, conditional or unconditional (as applicable) for payments to the General Contractor, and any subcontractors and/or materialmen of any mechanics lien, stop notice claim, equitable lien claim or other lien claim rights as the Agency deems necessary.

2.6 Evidence of Borrower's compliance with the provisions of the Articles and Sections of this Disbursement Agreement entitled **Construction** (Article 3) and **Authority/Enforceability** (Article 6.1);

2.7 Evidence satisfactory to the Agency that all other construction and permanent lenders and investors have approved the completed Improvements (to the extent necessary under their respective documents) and that no defaults exist under any permanent loan commitments or equity contribution commitments prior to the final Retention Disbursement or the final stage Disbursement of Hard Costs, as applicable;

2.8 Evidence that any goods, materials, supplies, fixtures or other work in process for which Disbursement is requested have been incorporated into the Improvements;

2.9 In the event any Application for Payment includes the cost of materials stored at a location other than the Development ("**Offsite Materials**"), such Application for Payment shall include each of the following: (a) evidence that the Offsite Materials have been purchased by Borrower, have been segregated from other materials in the facility and have been appropriately marked to indicate Borrower's ownership thereof and the Agency's security interest therein; (b) evidence that the Offsite Materials are insured as required by this Disbursement Agreement; and (c) at the Agency's request, a security agreement, financing statement and/or subordination agreement in form and substance satisfactory to the Agency executed by the supplier of the Offsite Materials, and/or such other persons as the Agency determines may have an interest in or claim to the Offsite Materials, together with such other additional documentation and evidence as the Agency may reasonably require to assure itself that it has a perfected first priority lien on the Offsite Materials;

2.10 In the event that any Application for Payment includes the cost of materials stored on the Development ("**Onsite Materials**"), such Application for Payment shall include each of the following: (a) evidence that the Onsite Materials have been purchased by Borrower; (b) evidence that the Onsite Materials are insured as required hereunder; and (c) evidence that the Onsite Materials are stored in an area on the Development for which adequate security is provided against theft and vandalism; and

2.11 Any other document, requirement, evidence or information that the Agency may request under any provision of the MHSA Permanent Loan Documents.

3. Retention. Any Retention (defined below) shall be disbursed upon the Agency's receipt and approval of the following:

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3.1 Valid, recorded Notice(s) of Completion for the Improvements or any portions of the Improvements for which Notice(s) of Completion may be recorded under applicable law;

3.2 If applicable, a Certificate of Occupancy or equivalent;

3.3 Waivers and Releases as specified in Section 4.1 of the Disbursement Agreement and Section 2.5 of this Exhibit;

3.4 A final 101.2 Title Endorsement and other endorsements as may be required by the Agency;

3.5 A copy of final inspection report by an inspector approved by the Agency;

3.6 Evidence that Borrower has maintained proper insurance coverage pursuant to the insurance requirements specified in Article 5; and

3.7 Any other such items deemed necessary by the Agency.

4. Disbursement of Land Cost. The portion of the Disbursement Budget initially totaling \$_____ shall be disbursed to or for the benefit or account of Borrower for the payment of the land cost.

5. Periodic Disbursement of Certain Construction Costs, Site Work Costs and Offsite Costs. As construction progresses, the portion of the Disbursement Budget attributable to Items _____ (Construction, Rehabilitation, Site Work, and Off-Site) which costs initially totaling \$_____ shall be periodically disbursed to or for the benefit or account of the Borrower for up to _____ percent (____%) of the maximum amount allocated for such Item less prior Disbursements. The remaining _____ percent (____%) ("**Retention**") in the amount of \$_____ shall be disbursed to or for the benefit or account of the Borrower upon completion of the Improvements in accordance with the Plans and Specifications, governmental requirements, the statutory lien period has expired and the Agency has received an LP-10 rewrite of the Title Policy or a 101.2 endorsement, whichever the Agency deems as appropriate. Notwithstanding the foregoing, all or part of the Retention for the following Items may be released upon satisfactory completion of such Items and delivery of conditional lien releases: _____, provided that the aggregate Retention shall not be reduced below _____ percent (____%). Borrower shall obtain and deliver to the Agency final lien releases for the above Items, promptly in connection with release of the Retention.

6. Hard Costs Contingency Reserve. The portion of the Disbursement Budget initially totaling \$_____, allocated for the payment of Hard Cost contingencies, shall be periodically reallocated within the Disbursement Budget for cost overruns that have been approved by the Agency for Hard Cost Items and disbursed in accordance with paragraphs hereof depending upon the intended use of any such funds.

7. Certain Soft Costs. The portion of the Disbursement Budget initially totaling \$_____, allocated for the payment of certain soft costs identified as consultant/processing agent and audit shall be periodically disbursed to or for the benefit or account of Borrower for the payment of such soft costs.

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8. Periodic Disbursement of Taxes and Insurance Premiums. The portion of the Disbursement Budget initially totaling \$ _____, shall be periodically disbursed to or for the benefit or account of the Borrower for the payment of taxes and insurance premiums incurred during the MHSA Permanent Loan term as taxes and insurance premiums become due and payable.

9. Periodic Disbursement of Title, Expense. The portion of the Disbursement Budget initially totaling \$ _____, shall be periodically disbursed to or for the benefit or account of the Borrower directly to title company for the payment of title expenses.

10. Periodic Disbursement of Legal Fees. The portion of the Disbursement Budget initially totaling \$ _____, shall be periodically disbursed to or for the benefit or account of the Borrower for the payment of legal fees.

11. Periodic Disbursement of Legal, Appraisal, Costing, Inspection and Flood Certification Fees. The portion of the Disbursement Budget initially totaling \$ _____ shall be periodically disbursed directly to the Agency for the payment of legal, appraisal, costing, inspection and flood certification fees incurred in connection with the MHSA Permanent Loan. The Agency is hereby authorized to charge the MHSA Permanent Loan directly for such fees as they become due. The Agency shall provide Borrower with statements for all fees incurred. Depletion of funds in this category shall not release Borrower from any of Borrower's obligations under the MHSA Permanent Loan Documents including, but not limited to, paying fees incurred in connection with the MHSA Permanent Loan pursuant to Article 8 (Section 1) of this Disbursement Agreement.

12. Soft Costs Contingency Reserve. The portion of the Disbursement Budget allocated for the payment of soft cost contingencies initially totaling \$ _____, shall be periodically reallocated within the Disbursement Budget or disbursed to or for the benefit or account of the Borrower for cost overruns that have been approved by the Agency for soft costs Items and disbursed in accordance with this **Exhibit D**, depending upon the intended use of any such funds.

13. Architect, Survey & Engineering. The portion of the Disbursement Budget initially totaling \$ _____ shall be periodically disbursed to or for the benefit or account of the Borrower for the payment of architect, engineering and survey costs.

14. Developer Overhead and Profit. Borrower shall not use any MHSA Permanent Loan funds or funds obtained from any other source to pay overhead, profit, development fees or any other similar fees to itself or any related entity until the completion of construction and then only with the prior written consent of the Agency.